

**REPORT
OF THE
ENVIRONMENTAL QUALITY
SERVICE COUNCIL**



**Indiana Legislative Services Agency
200 W. Washington St., Suite 301
Indianapolis, Indiana 46204-2789**

November, 2000

PREFACE

The following report of the Environmental Quality Service Council is provided for informational purposes only. This report was not officially adopted as the “final” report of the Council because the motion to adopt the report failed to achieve an affirmative vote by a majority of the appointed members.

ENVIRONMENTAL QUALITY SERVICE COUNCIL

Membership Roster

Senators

Beverly Gard
Greenfield

Kent Adams
Bremen

Vi Simpson
Bloomington

Glenn Howard
Indianapolis

Representatives

Ron Herrell, Chair
Kokomo

Richard Mangus
Lakeville

Dale Sturtz
LaGrange

David Wolkins
Winona Lake

Lay Members

David Benshoof
Indianapolis

Randy Edgemon
Greenwood

Marvin Gobles
Granger

Max Goodwin
Terre Haute

Regina Mahoney
Indianapolis

David Rector
Newburgh

Alice Schloss
Indianapolis

Michael Carnahan
Edwardsport

Honorable Jack Fowler
Winchester

William Goffinet
Tell City

Lori F. Kaplan
Indianapolis

Kerry Michael Manders
Indianapolis

Gary Redding
Greensburg

Lynn Waters
LaPorte

Staff

Bernadette Bartlett
Fiscal Analyst for the Council

Bob Bond
Tim Tyler
Attorneys for the Council

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

Environmental Quality Service Council

I. STATUTORY DIRECTIVE

The Environmental Quality Service Council (EQSC) is required by P.L. 248-1996 to do the following:

- (1) Advise the Commissioner of the Indiana Department of Environmental Management (IDEM) on policy issues decided upon by the EQSC.
- (2) Review the mission and goals of IDEM and evaluate the implementation of the mission.
- (3) Serve as a council of the General Assembly to evaluate:
 - (A) resources and structural capabilities of IDEM to meet IDEM's priorities; and
 - (B) program requirements and resource requirements for IDEM.
- (4) Serve as a forum for citizens, the regulated community, and legislators to discuss broad policy directions.
- (5) Submit a final report to the Governor, the General Assembly, the Budget Committee, and the Administrative Rules Oversight Committee each year that contains:
 - (A) an outline of activities of the EQSC;
 - (B) recommendations for any IDEM action;
 - (C) recommendations for any legislative action; and
 - (D) an estimate of funding levels required by IDEM, including an evaluation of permit fees.

II. INTRODUCTION AND REASONS FOR STUDY

The activities of the EQSC in 2000 were conducted to discharge the EQSC's various responsibilities under:

- ▶ P.L. 248-1996; and
- ▶ the other acts imposing responsibilities on the EQSC.

III. SUMMARY OF WORK PROGRAM

The Council met six times on the following dates and at the following locations:

Date	Location	Topic(s) Discussed
1. January 14, 2000	State Library Auditorium, Indiana State Library 140 N. Senate Ave. Indianapolis, Indiana	White River Fish Kill
2. July 25, 2000	Conference Room C Governmental Center South 302 W. Washington St. Indianapolis, Indiana	Overview of the Duties and Responsibilities of the EQSC 2000 Agenda
3. Sept 27, 2000	House Chambers	Lead Abatement Program

	State House 200 W. Washington St. Indianapolis, Indiana	Clean Water Indiana
4. October 25, 2000	House Chambers State House 200 W. Washington St. Indianapolis, Indiana	Brownfields Program Wildcat Creek Project Watershed Management
5. Nov 13, 2000	Rooms 1 & 2 Governmental Center South 302 W. Washington St. Indianapolis, Indiana	Indiana Ozone Strategies Environmental Audit Reports
6. Nov 22, 2000	Conference Room C Government Center South 302 W. Washington St. Indianapolis, Indiana	Agricultural Buffer Zones Subcommittee Recommendations Agency-wide Services EQSC Final Report

IV. SUMMARY OF TESTIMONY

First Meeting - January 14, 2000. The meeting focused on the circumstances of the fish kill in the White River that began in December 1999. Lori F. Kaplan, IDEM Commissioner, presented an overview of the circumstances surrounding the fish kill and IDEM's response. Commissioner Kaplan reported the following:

- ▶ IDEM was investigating the fish kill. IDEM could not comment on all aspects of the pending investigation because of possible violations.
- ▶ Commissioner Kaplan summarized the events relating to the fish kill, communications with local health departments, the Indiana Department of Health (IDH), and the Indiana Department of Natural Resources (IDNR), and notices to the Indianapolis Water Company.
- ▶ Public meetings on the fish kill were held in Madison, Hamilton, Marion, and Morgan Counties. IDEM had also made a presentation to the Indianapolis City County Council on the subject.
- ▶ Commissioner Kaplan made available at the meeting maps of the affected areas detailing certain information from the IDEM investigation.

Tim Method, IDEM Deputy Commissioner, presented a time line of the fish kill as well as a series of slides that addressed issues under investigation, involvement of the Anderson Wastewater Treatment Plant, damage to the river and the ecosystem, potential health effects, and potential violations.

Lt. Steve Hunter, Supervisor for the Anderson area, Law Enforcement Division, Indiana Department of Natural Resources (IDNR) addressed his department's involvement with the fish kill. Lt. Hunter summarized the locations where observations were made, the breadth of the affected area, and the numbers of dead fish observed.

Bill James, IDNR Chief of Fisheries, presented his evaluation of the damage to fisheries and the Department's plans for restoration of the river. He observed that no birds or mammals were affected, and that the fish kill did not extend into tributaries of the river. Once continuing surveys show that the

contamination is no longer present, the Department will stock fish to speed and direct the repopulation of the river.

Matt Rueff, Assistant Commissioner, IDEM Office of Water Management, noted that the White River is heavily stressed due to bacteria from combined sewer overflows and storm water runoff.

Felicia Robinson, Assistant Commissioner, IDEM Office of Enforcement, explained that IDEM regulates discharges by plants into the river, and that the U.S. Environmental Protection Agency (U.S.EPA) oversees the plant's pretreatment program. There is an extensive review of records at pretreatment facilities. Whether the terms of the plant's permit were violated is under investigation.

Pete Maniago, Assistant Commissioner of Operational Services of Indiana Department of Health (IDH), reported that the results of tests by the IDH of 133 wells along the part of the river affected by the contamination were negative.

Pat Carroll, Branch Chief, Drinking water Branch, IDEM Office of Water Management, indicated that IDEM employed a geologist to review the probability that the contamination would affect groundwater.

Mario Sgro, IDH, provided an overview of studies pertaining to the effects of contaminants on animals and humans.

Barry McNulty, Hamilton County Health Department, recounted the chronology of his involvement with the fish kill. He stated that the Madison County Health Department was aware of the nature of the event at least one week before he was. He noted that he was never advised of the event by the Anderson Wastewater Treatment Plant.

Brant Cowser, President of Friends of the White River, expressed his concern about whether adequate communication took place among state and local agencies and affected parties.

Richard M. Van Frank, Audubon Society, expressed his concerns pertaining to the Anderson Wastewater Treatment Plant pretreatment program, the adequacy of available private lab facilities for water testing, the means of differentiating normal seasonal die-offs from fish kills caused by contamination, the need for a coordinated response among state and county agencies, and the need for an unbiased study of agency response procedures.

Bill Beranek, President, Indiana Environmental Institute and Chair of the Marion County Local Emergency Planning Commission, noted the difficulty of identifying a chemical that kills fish in a river when the chemical might no longer be present at the time of testing. He also addressed the history of procedures for communications among agencies in the event of a fish kill or similar event and outlined the particular needs associated with the emergency response function, the enforcement function, technical assistance for recovery, the expert response coordination function, and the public communications function.

John Shettle, Orestes Town Board President and member of the Upper White River Watershed Alliance Inc., stressed the need for rapid communications procedures in emergencies such as the fish kill.

Dr. Rae Schnapp, Water Policy Director, Hoosier Environmental Council, expressed her concerns that the emergency response was slow, the best opportunity for identification of the contaminating agent or agents was lost, and inadequate notice was given to the general population. She also expressed concerns that the environmental rule making procedure is dominated by regulated interests and that IDEM is reluctant to use its authority to penalize polluters.

Glenn Pratt expressed his concern that the importance of emergency response within IDEM has been diminished by pushing responsibility down to a lower organizational level. He suggested that IDEM should modify all permits by rule to require reporting of upsets immediately when they occur. He further recommended that personnel in IDEM positions dealing with scientific matters should have scientific backgrounds and that the overall IDEM staffing situation should be reviewed.

Commissioner Kaplan commented that, in retrospect, IDEM might have brought more people into the emergency response sooner than it did. She indicated that IDEM will evaluate all of the comments from this meeting and others, will coordinate with other agencies, and will seek to establish a more flexible protocol to address emergency events of this nature.

Max Goodwin commented on the role of the Council and on his belief that new statutes are not needed to address the emergency response situation. He indicated that the focus should be placed on achieving fishable and swimmable waters.

Second Meeting – July 25, 2000. At the second meeting, the Council reviewed topics assigned to the Council.

Commissioner Kaplan provided the Council with an update on the work of the Department. She summarized outreach, education, and assistance activities provided by IDEM from December 1999 through June 2000. She also reported on rule-making activity of the environmental boards; fees collected, permit report cards, and permit charts; press releases; upcoming calendar events; rule-making and policy work groups; and new directives for IDEM and the EQSC resulting from the 2000 legislative session. She noted that IDEM had not issued a late permit for the past 20 consecutive months.

Commissioner Kaplan also discussed the work of the Indiana's Greening the Government Task Force; the Governor's awards for excellence in recycling; and the toxic release inventory, which indicated that toxic chemicals released by Indiana manufacturers have dropped 8% from the preceding year's levels.

Restoration of the White River. Commissioner Kaplan provided an update on activities surrounding the fish kill in the White River. Bill James, Division of Fish and Wildlife, Department of Natural Resources, reported on efforts to restore the river.

IDEM Staffing. Commissioner Kaplan referred to an IDEM staffing report prepared by Legislative Services Agency. The report provided a picture of where IDEM is and where they have been in terms of staffing and how IDEM compares with other agencies. The IDEM vacancy rate was nine percent. The agency is working to reduce the number of vacancies.

Subcommittees and the Water Quality Data Task Force. Rep. Herrell indicated that he had received requests to study wetlands issues and septic systems issues. Exercising his authority under P.L.

248-1996, SECTION 1(h) to designate subcommittees, he established the following two subcommittees:

The Septic Systems Subcommittee
The Wetlands Subcommittee

Rep. Herrell appointed Sen. Beverly Gard as Chair of the Septic Systems Subcommittee and Sen. Vi Simpson as Chair of the Wetlands Subcommittee.

P.L. 140-2000 (SEA 431) requires the EQSC to appoint a Water Data Task Force to assess the program resource needs of IDEM to collect adequate physical, chemical, and biological data used by IDEM. Rep. Herrell asked members of the audience to request in writing if they are interested in serving on the Water Data Task Force.

The 2000 EQSC Agenda. Rep. Herrell asked parties interested in proposing a topic for the Council to study to send topics of interest to either himself or the staff. Sen. Gard recommended that the Council study funding issues, lead abatement; and the internal audit statute. Regina Mahoney suggested that the Council consider the success of the brownfields program, sources of funding for the program, and lessons that have been learned. Kerry Manders suggested an update on the watershed management program in conjunction with an update on the Wildcat Creek pilot project. Randy Edgemon recommended an update on the establishment of agricultural buffer zones on all waterways and whether funding exists to establish them.

Third Meeting--September 27, 2000

Commissioner's Monthly Report. Commissioner Kaplan presented the monthly report to the EQSC.

Report from the Wetlands Subcommittee. Rep. Herrell read the names of EQSC members of the Wetlands Subcommittee. Sen. Vi Simpson presented a report on the subcommittee's work to date. (See Appendix 1.)

- ▶ **Report from the Septic Systems Subcommittee.** Rep. Herrell read the names of EQSC members of the Septic Systems Subcommittee. Sen. Gard presented a report on the subcommittee's work to date. (See Appendix 2.)

Water Data Task Force. Bob Bond, Attorney for the Council, reviewed the task as assigned in statute to the Water Data Task Force. Public Law 140-2000 identifies the work of the task force to assess the program resource needs of IDEM to collect adequate physical, chemical, and biological data used by IDEM. The Task Force must present its findings to the EQSC. Rep. Herrell read the names of EQSC members of the Water Data Task Force. (See Appendix 3.)

Lead Abatement Program. Frank Profit, Section Chief, Asbestos/Lead Section, IDEM, provided an overview of the Lead Abatement Program. The U.S.EPA promulgated a lead-based paint regulation in 1996 in response to instances of children being poisoned by lead. IDEM received federal authorization from U.S.EPA to implement the state program. Lead-based paint was banned from residential use in 1978. Housing built prior to 1978 is targeted as well as a child occupied facility built prior to 1978 that is visited by a child six years or younger for at least six hours per week. The regulation applies only when an individual is performing an abatement. An abatement is a project designed to permanently remove the

lead-based paint hazard. It does not apply to a renovation, remodeling, or repair. Homeowners may remove the paint without being licensed if there is not a child six years or younger living in the house with an elevated blood lead level.

Sen. Gard suggested that IDEM place brochures in paint stores to inform and warn people of the hazards and regulations regarding lead paint. Kerry Manders agreed with the need to distribute information to paint and hardware stores and suggested that IDEM also distribute information to school corporations.

Lead Assessment Program. Paula Smith, IDEM, explained the lead assessment program which is a statewide program wherein IDEM, upon request, will visit houses to determine if lead-based paint is a problem and to provide residents with information that will lessen the exposure to lead.

Clean Water Indiana. Christa Jones, Indiana Association of Soil and Water Conservation Districts, (IASWCD) discussed soil erosion, water quality issues, and some of the conservation practices SWCDs promote. The Clean Water Indiana Fund was created by the Indiana General Assembly in 1999. However, no dollars were placed in the fund. The Clean Water Indiana coalition, led by the IASWCD will request \$12 million for the Clean Water Indiana fund in the 2001-02 state budget. Clean Water Indiana is a long-term solution for non-point source pollution of waters. SWCD services are strictly voluntary and focus on private lands. SWCDs traditionally provide services to agricultural producers, teachers and other educators, and developers. With increased land use pressures, demand for SWCD services will increase. According to Ms. Jones, Indiana lags behind all Midwestern states in state funding for soil and water conservation districts.

Fourth Meeting-October 25, 2000

Commissioner's Monthly Report. Commissioner Kaplan provided the Council with an overview of the work of the Department during September.

Report from the Wetlands Subcommittee. Sen. Simpson, Chair of the Wetlands Subcommittee, reported on the work of the subcommittee. (See Appendix 1.)

The Brownfields Program. Michelle Oertel, Senior Environmental Manager, IDEM, and Courtney Tobin, Executive Director of the Indiana Development Finance Authority provided an overview of the history and current operations of the Brownfields Program.

Wildcat Creek Project. Wes Stone, Special Projects Coordinator, and Jill Reinhart, Section Chief, Water Management Section, Office of Water Management, IDEM, provided an overview of the Wildcat Creek Project.

Fifth Meeting- November 13, 2000

Commissioner's Report. Commissioner Kaplan stated that IDEM has officially just finished two complete years without a single late permit. IDEM has not issued a late permit since October 1998. Since that time IDEM has issued 5,857 permits. Of this total, 2,839 were waste water permits; 1,423 drinking water permits; 880 solid waste; 711 air; and four hazardous waste.

Groundwater Rules. Commissioner Kaplan reported that in the late 1980s, the statute was enacted that required the Water Pollution Control Board to adopt rules to establish groundwater standards for Indiana. The statute set up the Groundwater Task Force, which consists of citizens, representatives from local government and business, and representatives from five state agencies. In November 1999 the draft rule was brought to the Water Pollution Control Board for preliminary adoption. After the preliminary adoption, IDEM learned that there were still some issues outstanding and that additional discussion was warranted. Some were concerned that there should be a level identified for those who are not officially violating standards but who are headed in that direction. Also, applicability was discussed—whether the groundwater rules take effect immediately upon passage or whether additional rules need to be promulgated by the different agencies involved (IDEM, the Department of Natural Resources, the Department of Health, and a few others). Two public sessions have occurred in October to take comments. The Groundwater Task Force has met, and IDEM is reviewing all comments that were received. IDEM hopes to discuss these issues further with the Groundwater Task Force in December and prepare a recommendation for the Water Pollution Control Board.

Indiana Ozone Strategies. Janet McCabe, Assistant Commissioner, Office of Air Management, IDEM, reported on ozone standards and the Indiana Nitrogen Oxides (NO_x) Rule.

One-hour Ozone Standard. Two areas of the state are still considered non-attainment areas for the one-hour ozone standard: Lake and Porter Counties near the Chicago area and Clark and Floyd Counties near the Louisville area. With respect to Lake and Porter Counties, by the end of this year IDEM is required to submit the final pollution control plan to the U.S. EPA. The plan relies on a number of measures that have been in place for a number of years as well as some new measures, including the NO_x rule. A public hearing is scheduled for this plan on November 15. Air quality has been improving in this part of the state, but the air is still unhealthy compared to the one-hour standard for a number of days in the summer in the Chicago/Northwest Indiana area.

For Clark and Floyd Counties, though not as severely polluted as the Chicago area, the air quality is also improving. IDEM has already submitted a plan for attainment to the U.S. EPA for that area. The plan is under review. As of the summer of 2000, no violation of the one-hour ozone standard in the area has occurred for the past three years. Consequently, the area is eligible for IDEM to proceed with the re-designation process, which involves composing a plan for the EPA that indicates that the air quality standard has been met because of the measures that have been in place. The measures will continue to be in place, and IDEM will continue to monitor the air quality. IDEM will ask that the area be re-designated to attainment. The U.S. EPA has indicated that they would be receptive to receiving this request.

Eight-hour Ozone Standard. The U.S. EPA promulgated this ozone standard three years ago. The standard tightened the requirements by lowering the level of pollutants and measuring the standard over a longer period. Health studies indicate that longer exposure to lower levels caused adverse health effects. EPA received several law suits that challenged their setting of that standard. The U.S. District Court of Appeals for the D.C. circuit remanded the standard for EPA to reconsider the rationale that they used to establish it. The U.S. EPA asked the U.S. Supreme Court to review the Court of Appeals' ruling. On November 7, the case was argued before the Supreme Court. The Court's decision is expected sometime before the end of June.

In the meantime, EPA has been prohibited from implementing the eight-hour standard. A federal law was also passed that stated that the EPA could not formally decide which areas of the country do not meet the standard until the Supreme Court makes its decision next summer. EPA had been in the process of

canvassing the country to find out which areas had air quality over the standard. EPA required all states to submit comments last summer. IDEM reviewed and commented on the guidance that EPA had distributed pertaining to how decisions would be made relative to which counties would be considered as reaching attainment or non-attainment.

When EPA responds, the response will begin a formal 120-day consultation period wherein the state and EPA will consult on what the appropriate designations should be. EPA would have to publish the proposed designations, and the public would have an opportunity to comment. IDEM believes that it is inadvisable to give counties a legal definition of non-attainment when it is not clear what the implications will be in terms of economic development constraints.

Statewide NOx Rules. The U.S.EPA in response to petitions from some Northeastern and Middle-Atlantic states found that the whole eastern half of the country was contributing to high ozone levels in the region. In order to arrest the ozone problem, there had to be regional reductions of one of the main precursors of ozone formation, which were NOx. EPA, working with the states in a large technical group called the Ozone Technical Assessment Group, concluded that emissions of NOx from tall stacks, such as electric utilities, were contributing to the regional ozone problem. So, EPA issued a NOx SIP call, which means that there is something inadequate in the state plan and that the state must submit revisions.

Indiana participated in challenges to the SIP call because IDEM believed that EPA's approach was a generic approach that did not allow states to come up with their own plan for reducing the necessary amounts of pollution. Additionally, EPA was requiring more reductions than IDEM believed that science indicated was needed in order to reduce regional ozone. Last spring the court upheld the SIP call and ordered the states to complete their rules by October 2000. Several states including Indiana have asked the U. S. Supreme Court to review the decision.

In the meantime, states need to conform to the rules. IDEM began rule-making last July. A large work group of representatives from utilities, environmental organizations, businesses, local government, etc., are working on the rule.

Environmental Audit Reports. Felicia Robinson, Assistant Commissioner, Office of Enforcement, IDEM, provided an overview of environmental audit reports. IC 13-28-4-11 provides that IDEM must report annually to the EQSC on the use and effectiveness of its enforcement policy that provides relief from civil penalties for voluntary disclosure that results from an internal environmental audit. The goal of self-disclosure and the audit policies is for industries to review their operations and the environmental impacts of those operations. If they find violations, they can come to IDEM and under certain conditions IDEM will abate the penalty that would be assessed by 75% or 100% if the industry installs an environmental management system that would insure ongoing monitoring of environmental performance.

IDEM has not had as many people come forward pursuant to the policy as they had hoped. Fear may prohibit individuals from coming forward. The robust compliance assistance program in the state that affords facilities confidentiality in correcting problems might also affect participation. Third, many companies view environmental audits as being expensive and not necessary. On the other hand, EPA also has an audit policy. Many of the companies that have come forward pursuant to these policies are national companies. Oftentimes national companies will go to EPA first to insure that even if they report their violations to the state they will also be protected. from EPA. Nine conditions must be met before an individual can take advantage of the audit policy.

Report from the Septic Systems Subcommittee. Sen. Gard, Chair of the Septic Systems Subcommittee, reported on the work of the subcommittee. (See Appendix 2.)

Other Issues. David Benshoof requested that IDEM review their professional training and development budget and consider an increase in funding for training. Commissioner Kaplan commented that one of IDEM's priorities is to enhance professional development and training. Turnover at the agency is not as high as some might expect. Over 50% of the staff have worked at IDEM for five years or more; 25% have worked at IDEM for ten years or more.

Sen. Howard expressed his concerns that we train officials to assist in compliance, yet businesses that do not comply threaten to leave the state if they are forced to comply.

Meeting 6. November 22, 2000.

Agricultural Buffer Zones. Susan McLoud, Water Quality Liaison to the IDEM, Natural Resources Conservation Service, U.S. Department of Agriculture, provided an overview of agricultural buffer zones. She noted that the Iowa Buffer Initiative is a good example of the Farm Bureau, Trees Forever, and state and federal agencies working together. They have set up over 100 demonstration sites around the state of Iowa. They have also set up an exchange of farmer-to-farmer information.

Commissioner's Report. Commissioner Kaplan highlighted press releases of the Department, noting that 34 businesses and the Department of Defense have pledged to establish pollution prevention programs as a part of the Partners for Pollution Prevention. She also pointed out the list of maintenance shops that have joined the 5-Star Program for taking proactive steps to protect the environment and the child-care facilities that have received top honors for providing children with environmentally safe facilities. Commissioner Kaplan followed-up on items discussed at the previous meeting. With respect to Sen. Gard's question about the audit privilege statute and whether U.S.EPA was still comfortable with the statute which went into effect two years ago, IDEM did receive confirmation that EPA had found it to meet their rule requirements and it continues to do so. With respect to industrial waste and concerns and confusion pertaining to the change in law, IDEM is participating in community meetings across the state. IDEM is engaging in discussions that will be the basis for rule-making regarding industrial waste.

Agency-wide Services. Jeff Underwood, Controller, IDEM, provided a brief up-date on agency-wide services.

The remainder of the meeting pertained to EQSC findings and recommendations.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

Final Report from the Wetlands Subcommittee. Randy Edgemon presented the final report, including recommendations, of the Wetlands Subcommittee for Sen. Simpson, Chair of the Wetlands Subcommittee. (See Appendix 1.)

Commissioner Kaplan explained that with respect to recommendation #4, which pertained to the Interagency Coordination Agreement on Mitigation Banking, IDEM would be working in conjunction

with other entities in implementing the program. She explained that a Mitigation Banking Agreement document currently exists. Signatories to the document are the Corps of Engineers, the DNR, and the U.S. Fish and Wildlife Service. IDEM had some concerns about the agreement and is working with the above mentioned entities to make changes to the agreement. Once agreement is reached, IDEM will also be a signatory to the Mitigation Banking Agreement. In order to acknowledge that IDEM would be working with other entities, the phrase “and then implements a mitigation banking program” in recommendation #4 was deleted by consent of the Council.

With respect to recommendation #6, which recommended that IDEM, the DNR, and other agencies prepare an inventory of wetlands, Mr. Edgemon noted that a proposed draft of legislation had been prepared that reflected the recommendation. The proposed draft also included a section extending the expiration date of the EQSC. Rep Herrell suggested that the two different issues—a wetland inventory and the extension of the EQSC-- should not be in the same proposal. He believed that an inventory was a good idea but did not believe that a statutory directive was needed to require that a inventory be conducted.

The introductory phrase of recommendation #6, which was “Upon approval of legislative authority and funding,” and the concluding phrase “by July 1, 2003” were deleted, and the amended recommendation was approved by consent of the Council.

With respect to recommendation #8, pertaining to the performance bond option, Rep. Herrell expressed his concern that a performance bond could be accepted for a wetland that is not replaceable. Rep. Herrell read Alice Schloss’ letter that opposed the option of performance bonding for Tier II wetlands. Sen. Gard suggested that the EQSC recommend that IDEM develop rules and criteria for allowing the performance bonding option in warranted situations worded in such a way as to give the Commissioner flexibility to consider performance bonding. The Council approved by consent the following amended language to recommendation #8: “The EQSC recommends that IDEM develop rules for allowing in warranted circumstances a performance bond option in lieu of up-front mitigation. The Council approved the amended recommendation by consent.”

A vote was taken to include the recommendations as amended from the Wetlands Subcommittee in the EQSC final report. The Council accepted the recommendations as amended by a voice vote. The recommendations as amended are provided in Appendix 1.

A vote was taken to include the report of the Wetlands Subcommittee as amended in the EQSC final report. The Council accepted by a voice vote the report as amended.

Final Report from the Septic Systems Subcommittee. Sen. Gard, Chair of the Septic Systems Subcommittee, reported on the work of the subcommittee. (See Appendix 2.) Sen. Gard recommended that the following should be added to recommendation #2: “Provisions of the Barrett Law should be expanded to allow Barrett Law bonds to be paid off over a twenty year period in lieu of the ten years as is required now.” This addition to the second recommendation was taken by consent. Also with respect to recommendation #2, Sen. Gard proposed eliminating the phrase “residence in an unincorporated area,” which begins in the third line of the second paragraph for recommendation #2. The phrase would exclude Marion County. This change was also approved by consent. With respect to recommendation #3 concerning permitting jurisdictions, Sen. Gard offered the following two additions which were approved by consent.

The state agencies should develop a process for including the local health departments in the review process earlier to benefit from information the LHD's have that would be beneficial in the planning and design process.

IDEM and IDOH should review current policy concerning who has jurisdiction over non-sanitary sewage (such as chemicals, etc.) that is discharged into a septic system.

Sen. Gard recommended that #9 and #10 be changed to indicate that the recommendations were to continue to study the issues detailed in #9 and #10.

Commissioner Kaplan stated for the record that because there are proposed legislation and potential fiscal impacts in the recommendations, she would be abstaining from voting on the recommendations. She, however, appreciated the work of the subcommittee.

A vote was taken to include the recommendations as amended from the Septic Systems Subcommittee in the EQSC final report. The Council accepted by a voice vote the recommendations as amended. The recommendations as amended are provided in Appendix 2.

A vote was taken to include the report of the Septic Systems Subcommittee as amended in the EQSC final report. The Council accepted by a voice vote the report as amended.

Recommendation for the Clean Water Indiana Fund. The Indiana Association of Soil and Water Conservation Districts submitted a recommendation pertaining to the Clean Water Indiana Fund. Sen. Gard noted that the Council has never recommended a specific dollar amount, as was in the recommendation, and that the Council has only heard a fifteen minute presentation on the issue that requested \$12 million. She did not feel that she had enough information to determine if \$12 million was the appropriate amount. The dollar amount was removed from the proposal and replaced with "funding." The Council considered the following recommendation: The EQSC recommends that the Indiana General Assembly provide adequate funding for the Clean Water Indiana Fund. Rep. Wolkins expressed his concern that the Clean Water Indiana Fund was not funded in the previous session and that the recommendation does not identify a specific dollar amount. A vote was taken to include the recommendation as amended in the EQSC final report. The measure, however, did not pass due to a lack of a majority of the members voting in the affirmative. Eleven members present voted for the measure; Commissioner Kaplan abstained, explaining that the recommendation included fiscal impacts and she was not in a position at this point in the state's budget preparations.

Recommendation to Extend the Expiration Date for the EQSC. Sen. Gard recommended that the Council be extended for five years. The EQSC recommended by a voice vote that the EQSC be extended until December 31, 2005.

Vote on the EQSC Final Report. A draft final report was distributed. A vote was taken for approval of the draft final report as amended as the EQSC 2000 Final Report. The measure, however, did not pass due to a lack of a majority of the members voting in the affirmative. Rep. Wolkins noted that he did not feel comfortable with the limited time allowed for discussion of the issues. Rep. Herrell noted that in reviewing the list of those who testified and in talking with the subcommittee chairs, no one was excluded from testifying at the subcommittee hearings. Sen. Gard noted that the subcommittees tried to be inclusive.

EQSC Witness List

Bill Beranek, President, Indiana Environmental Institute and Chair of the Marion County Local Emergency Planning Commission
Pat Carroll, Branch Chief, Drinking Water Branch, IDEM Office of Water Management
Dr. Dennis Clark, Biologist, IDEM
Brant Cowser, President of Friends of the White River
Pete Drum
Lt. Steve Hunter, Supervisor for the Anderson area, Law Enforcement Division, Indiana Department of Natural Resources (IDNR)
Bill James, Chief of Fisheries, Division of Fish and Wildlife, Department of Natural Resources
Christa Jones, Indiana Association of Soil and Water Conservation Districts
Lori F. Kaplan, Commissioner of the Indiana Department of Environmental Management (IDEM)
Pete Maniago, Assistant Commissioner of Operational Services of Indiana Department of Health
Janet McCabe, Assistant Commissioner, Office of Air Management, IDEM
Agricultural Buffer Zones, Susan McLoud
Barry McNulty, Hamilton County Health Department
Tim Method, IDEM Deputy Commissioner
Michelle Oertel, Senior Environmental Manager, IDEM
Glenn Pratt
Frank Profit, Section Chief, Asbestos/Lead Section, IDEM
Jill Reinhart, Section Chief, Water Management Section, Office of Water Management, IDEM
Felicia Robinson, Assistant Commissioner, Office of Enforcement, IDEM
Matt Rueff, Assistant Commissioner, IDEM Office of Water Management
Rae Schnapp, Water Policy Director, Hoosier Environmental Council
Mario Sgro, Indiana Department of Health
John Shettle, President, Orestes Town Board and member of the Upper White River Watershed Alliance Inc.
Paula Smith, IDEM
Wes Stone, Special Projects Coordinator, IDEM
Courtney Tobin, Executive Director of the Indiana Development Finance Authority
Richard M. Van Frank, Audubon Society
Jeff Underwood, Controller, Fiscal Management Division, IDEM

Appendix 1. Wetlands Subcommittee of the Environmental Quality Service Council (EQSC)

Membership Roster

Senators

Vi Simpson, Chair
Kent Adams
Glenn Howard

Representatives

Ron Herrell
Richard Mangus
Dave Wolkins

EQSC Lay Members

Randy Edgemon
Michael Carnahan
Alice Schloss

Advisory Members

Patrick Bennet
Michael Brown
Cliff Duggan
Michael Frey
Vince Griffin
Bill Hayden
Tim Maloney
Greg Quartucci
Rae Schnapp
Larry Smith
Travis Worl

Bill Beranek
Michael Carnahan
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October 30, 2000

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FINAL REPORT

Wetlands Subcommittee of the Environmental Quality Service Council

I. SUMMARY OF WORK PROGRAM

The Subcommittee met five times during the following dates to discuss issues listed below.

Date	Topic	Location
August 28, 2000	Overview of the proposed rule regulating impacts to wetlands	House Chambers, Indiana State House
September 6, 2000	Water Quality Standards	House Chambers, Indiana State House
September 28, 2000	Mitigation	Room 401-B, Indiana State House
October 19, 2000	Costs and benefits of regulating impacts on wetlands	House Chambers, Indiana State House
October 30, 2000	Recommendations	Conference Room 8, Indiana Government Center South

IV. SUMMARY OF TESTIMONY

Overview of the Proposed Rule Regulating Impacts to Wetlands. IDEM is in the process of drafting rules that create a standard to reflect and protect the uniqueness of wetlands. The Clean Water Act requires states to regulate wetland resources through a Section 401 water quality certification. The Water Pollution Control Board deferred preliminary adoption of the water quality standards in order to allow IDEM staff time to meet with individual organizations and citizens who raised concerns about the proposal and in order to provide the subcommittee with an opportunity to reflect on wetlands and issues related to water quality standards.

Wetlands are defined by the Army Corps of Engineers, the U.S. EPA, and IDEM as

Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands must contain hydric soils, hydrophytic plants, and wetland hydrology.

Decline in the Number of Wetlands. In the 1750's, 5.6 million acres of wetlands existed in Indiana which constituted 24% of the state's 23 million acres of surface area. By the 1980's, approximately 800,000 acres of wetlands remained or 3.7% of the state's surface area. These figures were taken from

the National Wetland Inventory compiled by the U.S. Fish and Wildlife Service in the 1980s.

Distribution of Wetlands. Wetlands acreage within counties ranged from 633 to 27,467. Wetlands are mostly concentrated in the northern part of the state with some large concentrations of wetlands in the Wabash and Ohio River Valleys.

Benefits of Wetlands. Wetlands provide

- water quality protection
- groundwater and surface water recharge
- flood protection
- shoreline erosion protection
- fish and wildlife habitat
- timber, fiber, produce, and animal products
- recreation and aesthetics

IDEM's Authority to Regulate. Section 401 of the Clean Water Act states that for any federal permit or license that would authorize a discharge into waters of the United States, the state must certify that the discharge is in compliance with the state's water quality standards. Regulated activities involve the placement of fill materials or the discharge of pollutants into a water body. The Act outlines the basic power of the state which is to determine if an activity is in compliance with the state's water quality standards.

Overview of the U.S. Army Corps of Engineers' Program. The federal permit program requires anyone who conducts dredge or fill activities to obtain a permit from the Corps before the work is begun. The program regulates all waters of the U.S. which includes both navigable and non-navigable. In Indiana, all tributary systems that drain into the Ohio River, whether they be temporal or intermittent, are included. The Corps also regulates human made waters, which can range from areas where a pit has been dug to ponds installed to naturalize or attract water fowl. The Corps uses a 1987 wetland delineation manual to determine the boundaries of wetlands as well as jurisdiction. Although exemptions for surface mining and agriculture exist, the Corps issues three types of Section 404 permits: general nationwide permits, general regional permits, and individual permits. The Corps can not issue a 404 permit until the state approves a Section 401 certification. The state can only issue of Section 401 certification if the project complies with state water quality standards.

Water Quality Standards. The Water Pollution Control Board wrote the water quality standards. The standards contain both numeric and non-numeric standards. Numeric standards are predominantly used for the regulation of effluent discharges. According to the water quality standards, a pollutant is any material or substance that would cause or contribute to the deleterious effects on the water quality. If a person places fill into a wetland, the wetland is gone. If a wetland is filled in order to install a parking lot, the former wetland is no longer supporting existing uses and it no longer has its biological properties. The effect is comparable to a metal plate facility running the line off the chromium plating straight into the water which would destroy the fish and have an adverse effect on the public water supply. The restrictions on discharges are easier to understand because the standard is numeric. Section 401 considers filling a wetland but not draining it.

Compensatory Mitigation. The regulatory program allows for compensatory mitigation or the creation of wetlands or aquatic bodies to offset the loss of existing wetlands. The mitigation ratio is three

to one. This ratio reflects the fact that humans are not as good at creating wetlands as nature. There is a loss in the inability to recreate what was there. The IDEM ten-year study suggested that some wetland mitigation sites were successful whereas others were not. Numbers from their study and some assessments they conducted bear out that a three-to-one ratio in many cases results in a one-to-one replacement because of the difficulty in recreating a wetland. Additionally, the ratio helps provide for temporal loss of water quality. A wetland that has trees that are 25 to 50 years old will not be replaced overnight with a new wetland. Mitigation ratios reflect how the agency has been doing business with regulated entities over the last five or six years. Agency decisions during this time have been successfully defended in court.

Criteria Used by IDEM to Certify. IDEM evaluates projects on a case by case basis. First, they evaluate the water body to the extent possible. They do not look at all the biological components. All components need to be evaluated, but the evaluation is limited by resources. Secondly, IDEM considers if the wetland is it connected to other water bodies; if it is harboring exceptional aquatic life; and whether the project could be altered in order to avoid or minimize the impact to the wetland. IDEM receives approximately 400 applications for 401 certification each year. The number of denials runs between five and eight percent. Of the five to eight percent, about 90% result in some sort of negotiated settlement which involves making changes to the project or to IDEM determination.

Consumer Responsibility. The burden is on the user to be aware if he or she is affecting a wetland in much the same way that the burden is on the buyer of a piece of property that had a former gas station on it to insure that underground storage tanks have been removed.

Wetland Mitigation Banking. IDEM, DNR, the U.S. Fish and Wildlife Service, the Corps of Engineers, and the USDA are working on an interagency agreement pertaining to mitigation banking. A mitigation bank is an organized mechanism that allows people to withdrawal or save credits relative to mitigation activities.

IDEM Study of Mitigation Sites. An IDEM study reviewed 345 mitigation sites. The testimony suggested that most projects use mitigation as opposed to avoiding or minimizing the impact. Of the 345 sites studied from 1986 to 1996, over 14% of the mitigation projects had never been started while 20% were started but not completed. About 35% had either not been started or not completed. While over 60% were considered constructed, a classification of construction did not mean that the site was complete or in compliance and functioning successfully. Many constructed sites failed. More staffing might help. Also, a study of successes or experiences in other states might be helpful.

Tier 1 and Tier 2 Wetlands. Generally, wetlands are considered to be Tier 1 unless they fall within following Tier 2 criteria concerning: (1) the presence of threatened or endangered species; or (2) conformance with definitions in the proposed rules of certain types of wetlands characterized by specific features.

Issues Raised. With respect to the proposed rules, the following concerns were raised:

- **Definition of Terms.** Some definitions were not clear. For example, what determines a successful wetland was unclear.
- **Tier 1 and Tier 2 Wetlands.** Some entities raised concerns that the distinction between a Tier 1 and Tier 2 was not clear.

- **Up-front Mitigation.** Up-front mitigation was a concern because projects might have to be put on hold for three to seven years in order to determine if wetland mitigation was successful. Many banks may not be interested in floating loans for this period.
- **Economic Impact and Benefits of Wetlands:** Some entities believed that the rule as proposed will result in a negative economic impact. Other stressed the positive impact of wetlands. Research suggests that wetlands can be valued at \$50,000 an acre in terms of flood control and water quality.
- **Clear and Predictable Rules.** Entities wanted the rules to have predictability, certainty, and timeliness. Some time lines proposed in the draft appear to be longer than necessary.
- **Wetland Standards.** The water quality standards set out a numeric standard for lakes and streams. Standards for wetlands should be different. To illustrate, a level of e-coli in a lake and stream makes water impaired. An isolated wetland with waterfowl may have a high e-coli content that also make it impaired. A standard, such as the e-coli standard, may not be appropriate for a wetland when the source of the e-coli is from wildlife.
- **Endangered Species.** The classification of species in a Tier 2 wetland was broad and encompassed many species.
- **Assessing and Monitoring Mitigation Sites.** IDEM may not have sufficient staff or procedure to monitor mitigation. A good assessment system to determine if a completed wetland is successful does not exist.
- **Permit Processing Time.** Some were concerned that the time allowed IDEM to process applications, up to one year, was too long.

Positive Reaction to the Proposed Rule. Some entities noted that there were a great deal of positives in the rule as proposed. First, in terms of establishing a strong philosophy of avoidance of impact, which mirrors the Corps' philosophy, is positive. The rule recognizes the important contributions of wetlands and the scientific factors involved in classification. The concerns from the regulated community that the up-front mitigation requirements are too burdensome speaks to the fact that wetlands replacement is a very uncertain science. Statistics indicate that many mitigation projects have not been completed. The rate of noncompliance is increasing according to IDEM's numbers. All these factors point to the need for stringent mitigation requirements that should bolster an avoidance policy. How far do we go to eliminate something that we know is a biologically and scientifically important resources? How do we protect them and still have the human uses of land that we're going to have.

IDEM Changes to the Proposed Rules. IDEM indicated that efforts will be made to clarify some of the definitions. Consideration is being given to deletion of language in Section 5 of the proposed rules that permits the commissioner of IDEM to require that compensatory mitigation be completed and approved prior to any impact to a Tier 1 wetland. Also under consideration is amendment of the language in Section 4 of the proposed rules so that Tier 2 designation does not result from the presence in the wetland of threatened or endangered species. The language of the proposed amendments has not yet been finalized.

V. Subcommittee Recommendations

The Subcommittee recommends that the EQSC make the following recommendations with respect to the topics specified below:

EQSC Wetlands Subcommittee Recommendations

As Amended by the EQSC

Wetland Water Quality Standards

- 1.** The EQSC recommends that IDEM works with USEPA to determine if accommodations can be made in the draft wetland water quality standards to address “non-human” or “natural” sources of E. coli that may occur in wetlands due to the presence of ducks, geese, and other wildlife. Once the determination is made, the EQSC recommends that IDEM establishes a numeric criteria for E. coli that is appropriate for protecting human health.
- 2.** The EQSC recommends that IDEM evaluates comments presented at the Water Pollution Control Board hearing or EQSC subcommittee meetings and makes revisions to the draft rules as needed to clarify certain definitions and requirements, correct errors, and insure that the draft rules are consistent with other rules and statutes.

Mitigation

- 3.** The EQSC supports IDEM’s decision to remove language from the draft wetland water quality standards that would have allowed the Commissioner of IDEM to require up-front mitigation of Tier I wetlands.
- 4.** The EQSC recommends that IDEM aggressively seeks to become a signatory to an Interagency Coordination Agreement on Mitigation Banking and then implements a mitigation banking program.
- 5.** The EQSC recommends that IDEM develops and implements immediately a program to regularly inspect and monitor completed wetland mitigation sites to insure compliance.

Miscellaneous

- 6.** Upon approval of legislative authority and funding, the EQSC recommends that IDEM with the Department of Natural Resources and other agencies prepare an inventory of wetlands for the state of Indiana and report its findings to the EQSC by July 1, 2003.
- 7.** The EQSC recommends that IDEM develops language in the Section 401 Water Quality Certification regulation that sets forth a review period of less than one year (perhaps 120 days) from the receipt of a completed application.
- 8.** The EQSC recommends that IDEM amends the rules to provide for a performance bond option in lieu of up-front mitigation.

The subcommittee also voted to adopt the final report of the subcommittee.

Wetlands Subcommittee Witness List

Fred Andes, Barnes & Thornburg
Bill Beranek, Indiana Environmental Institute
Patrick Bennett, Indiana Manufacturers' Association
Doug Bley, Bethlehem Steel
Mike Brown, American Electric Power
Dennis Clark, IDEM
Melanie Darke, Indiana Department of Commerce
Jim Davis, Waste Management
Tonya Galbraith, Indiana Association of Cities and Towns
Vince Griffin, Indiana State Chamber of Commerce
Bill Hayden, Sierra Club, Save the Dunes, Izaak Walton League
John Humes, Hoosier Energy
Paul Johnson, Indianapolis Water Company
Steve Jose, Indiana Department of Natural Resources
Nancy King, Office of Legal Counsel, Chief of Rules Section, Indiana Department of Environmental Management (IDEM)
Tim Maloney, Hoosier Environmental Council
Sandy Miles, Volunteer with the Sierra Club
Lori Olivier, Citizen
Andrew Pelloso, Senior Environmental Manager, Office of Water, IDEM
Jay Poe, Huntington County Surveyor
Scott Pruett, U.S. Fish and Wildlife Service (written testimony only)
James Robb, Office of Water Management, IDEM
Matt Rueff, Assistant Commissioner, Office of Water Management, IDEM
Mike Sandefur, Vectron
George Smolka, Save the Dunes
Jim Townsend, U.S. Army Corps of Engineers
Rick Wajda, Indiana Builders Association
Dan Willard, Retired Professor, Indiana University, School of Public and Environmental Affairs
Travis Worl, Indiana Association of Counties

Appendix 2. EQSC Septic Systems Subcommittee

Membership Roster

Senators

Sen. Beverly Gard, Chair
Sen. Kent Adams
Sen. Glenn Howard
Sen. Vi Simpson

Representatives

Rep. Ron Herrell
Rep. Dale Sturtz
Rep. David Wolkins
Rep. Richard Mangus

EQSC Lay Members

David Benshoof
Randy Edgemon
Marvin Gobles
Kerry Michael Manders
Gary Reding
Arthur Smith, Jr.
Mayor Jim Trobaugh

Legislative Services Agency Staff

Tim Tyler
Attorney for the Subcommittee

EQSC Septic Systems Subcommittee Meeting Summary

(1) August 7, 2000:

Howard Cundiff, Indiana State Department of Health (ISDH), and Matt Rueff, Indiana Department of Environmental Management, discussed septic systems regulation.

(2) September 6, 2000:

Dr. Don Jones, Purdue University, discussed septic systems and septic systems technology.

Linda Mauller, Wells County Health Department, discussed septic systems permits.

Mike Leppert, Indiana Utility Regulatory Commission (IURC), discussed IURC regulation of septic systems.

Dan Novreske, State Board of Accounts, and Courtney Tobin, Indiana Development Finance Authority, discussed septic systems funding options.

(3) September 28, 2000:

Alan Dunn, ISDH, discussed proposed ISDH septic systems rules.

Allan Pursell, The Nature Conservancy, and Greg Gapsis, Acorn Technical Group, discussed septic management districts.

Loren Robertson, Fort Wayne-Allen County Health Department, discussed the Allen County Water Quality Improvement Initiative.

(4) October 19, 2000:

Steve Hogue, United States Environmental Protection Agency (USEPA), discussed the USEPA role in the regulation of septic systems.

William Grant, LaGrange County Health Department, discussed septic systems and water contamination.

Richard Wise and Jacqui Bauer, Indiana Rural Community Assistance Program (RCAP), discussed an RCAP survey on septic systems.

Gary Chapple, Indiana Environmental Health Association Wastewater Management Committee, discussed septic systems.

Joe Rowlett, Indiana Regional Sewer District Association, discussed regional sewer districts.

(5) November 14, 2000:

Les Zwirn, discussed "Vision 2021," a report on rural sewage problems and solutions.

Greg Lake, Howard County Health Department, discussed the Indiana Onsite Wastewater Professionals Association.

The Subcommittee discussed recommendations to forward to the EQSC.

EQSC Septic Systems Subcommittee Findings

Testimony from numerous sources indicated that as many as one third of Indiana families are on septic systems and that up to 70% of those may be failing or functioning inadequately. An Indiana State Department of Health survey in 1999 estimated that as many as 920 communities in Indiana have inadequate means of sewage disposal.

The impact of failing septic systems on health and the environment is significant. Ground water and surface water contamination caused by failing septic systems is widely understood to have the potential to cause outbreaks of waterborne diseases such as acute gastrointestinal illness, hepatitis A and typhoid. E. coli contamination often results from failing septic systems.

There are multiple reasons that contribute to failure of onsite waste disposal systems. Problems are due, in part, to inadequate installation of onsite systems. Inadequate operation and maintenance of onsite systems are also major factors in system failure. Large portions of Indiana have soil types that are not compatible with traditional septic systems requirements. Density of the number of septic systems serving is important in the potential for septic systems contributing to water quality problems.

Recommendations by the Subcommittee have been consolidated into broad categories. They should be considered as the starting point to address the problem. The Subcommittee recognizes that the solutions to the problem are complex and it will take time to correct problems. The solutions will best be achieved with cooperation between state agencies, local officials, universities, private business, and citizens.

Solving the problem will require significant financial resources over the long term. It should be noted that while new technology is much better than the old technology, it does often require more on-going maintenance.

Appropriate legislative committees should continue, over the long term, to monitor progress in efforts to address problems with onsite waste management systems.

EQSC Septic Systems Subcommittee Recommendations As Amended by the EQSC

- 1. Onsite Waste Management Districts:** Enabling legislation should be enacted to allow county commissioners to establish onsite waste management districts. Recognizing that one size does not fit all, there should be the flexibility to allow for counties to meet the needs of their individual county. The legislation should allow counties to contract for the management of the district with entities such as, but not limited to, rural electric cooperatives and regional waste districts. Counties should be allowed to join with other counties to create a multi-county district. Authority for bonding, establishing fees, and entering into contracts should rest with the county commissioners.

Responsibilities of onsite waste management districts could include: coordination with local departments of health, state health and environmental officials, oversight of onsite sewage-related functions including septic system inventory, inspection, monitoring, installation, maintenance, establishing criteria for installers and inspectors, seeking grants for septic maintenance and other related activities, seeking solutions for disposal of septage from onsite systems, and other activities as determined by the county commissioners. Districts would have oversight of management and distribution of grant funds. Programs for education and training should be addressed by the districts. Budgeting responsibilities should be the same process that counties currently use.

- 2. Financial Incentives:** The State Revolving Fund (SRF) should be allowed to establish a grant program to award funds to counties that establish onsite waste management districts for use in doing inventories of onsite waste disposal systems, addressing problems with failing onsite waste disposal systems, managing disposal of septage from onsite systems, and other activities it considers relevant.

An income tax credit program should be adopted to provide an incentive to homeowners to replace or repair failing septic systems or to hook up to a community sewage system. Homeowner eligibility criteria for a state income tax credit should include: proof of inspection by a certified professional, proof of a life cycle maintenance contract with either a service district or a certified private entity, no new construction homes would be eligible, and provide a higher tax credit for either “proven” alternative technologies or more cost-effective “community/cluster” systems. It is suggested that the credit equal 30% of the cost of repairs or replacement systems to be paid out over a four year period.

Provisions of the Barrett Law should be expanded to allow Barrett Law bonds to be paid off over a twenty year period in lieu of the ten years as is required now.

- 3. Permitting Jurisdictions:** The Indiana Department of Environmental Management (IDEM) and Indiana State Department of Health (ISDH) should review policy and statutory regulations regarding the jurisdiction of each in permitting and oversight of onsite waste management systems. They should make recommendations on how the process can be made more efficient, less confusing, and provide more assistance to those with onsite waste management issues.

Recommendations should be provided to the Environmental Quality Service Council by July 1, 2001.

The state agencies should develop a process for including the local health departments in the review process earlier to benefit from information the LHD's have that would be beneficial in the planning and design process.

IDEM and IDOH should review current policy concerning who has jurisdiction over non-sanitary sewage (such as chemicals, etc.) that is discharged into a septic system.

4. **Alternative Regulation by IURC:** Legislation should be enacted giving the Indiana Regulatory Commission (IURC) the authority to use an alternative regulatory process when considering cluster systems, small package plants, and constructed wetlands for human sewage treatment. Under current law even a relatively small cluster system or other type of septic system can fall under the definition of a utility and be subject to IURC approval and jurisdiction. This is a disincentive to some in efforts to address waste disposal problems. The IURC should allow an alternative regulatory process in the event that local jurisdictions create districts to manage onsite waste disposal systems.
5. **Alternative Technologies:** IDEM and ISDH should develop guidelines to encourage the development and use of alternative technologies for onsite waste disposal in lieu of traditional septic systems while ensuring appropriate oversight and long term maintenance.
6. **Local Zoning Issues:** Local government legislative bodies and appropriate boards and commissions should consider requiring inspection of existing septic systems on property considered for re-zoning before acting on re-zoning. In approving new subdivisions, soil analysis and method of waste disposal should be a primary considerations.
7. **Professional Standards And Training Protocol:** The ISDH should establish a broad based working group to establish training protocol and professional standards for state and local health department personnel that are involved with onsite waste management systems. This should include installers, inspectors and others involved with the installation, oversight and maintenance of onsite systems.
8. **Education:** IDEM and ISDH should encourage and help develop education programs for owners of onsite waste disposal systems. Groups to include in promoting educational opportunities should include: county extension offices, private business, local health departments, realtors, and other organizations that have the ability to reach owners of onsite waste disposal systems.
9. **Research and Technical Assistance:** While no specific recommendations were made, the Subcommittee acknowledged that there was significant need for research into new and improved technologies and that there is also a need in local communities for technical assistance in addressing water quality issues associated with onsite waste disposal systems.

The EQSC recommends that the study of research and technical assistance continue.

10. **Septage Disposal:** No specific recommendations were made, however, it was determined that the disposal of septage from onsite systems is a serious problem. Suggestions made included: having treatment facilities dedicated solely to septage disposal and using a regional concept with incentives to facilities that expand to accommodate acceptance of septage from onsite facilities. Onsite waste management districts could help in addressing this problem.

The EQSC recommends that the study of septage disposal continue.

EQSC Septic Systems Subcommittee Witness List

Jacqui Bauer, Indiana Rural Community Assistance Program
Gary Chapple, Indiana Environmental Health Association
Howard Cundiff, Indiana State Department of Health
Alan Dunn, Indiana State Department of Health
Greg Gapsis, Acorn Technical Group
William Grant, LaGrange County Health Department
Steve Hogye, United States Environmental Protection Agency
Dr. Don Jones, Purdue University
Greg Lake, Howard County Health Department and the Indiana Onsite Wastewater Professionals Association
Mike Leppert, Indiana Utility Regulatory Commission
Linda Mauller, Wells County Health Department
Dan Novreske, State Board of Accounts
Allan Pursell, The Nature Conservancy
Loren Robertson, Fort Wayne-Alen County Health Department
Joe Rowlett, Indiana Regional Sewer District Association
Matt Rueff, Indiana Department of Environmental Management
Courtney Tobin, Indiana Development Finance Authority
Richard Wise, Indiana Rural Community Assistance Program
Les Zwirn

Appendix 3. Water Data Task Force

Membership Roster

Senators

Beverly Gard
Lindel Hume

Representatives

Ron Herrell, Chair,
Jeff Thompson
Gary Cook

Other Members

Dr. Jim Gammon
Department of Biological Services
DePauw University

Greta J. Hawvermale
Department of Public Works

Dr. Dennis Clark
IDEM, Office of Water Management

John Fekete
ISPAT Inland

Gwen White
IDNR, Division of Fish & Wildlife

Dr. Greg Steele
Health & Hospital Corp. of Marion Co.

Jeff Martin
U.S. Geological Survey

Howard W. Cundiff, P.E.
Indiana State Department of Health

C. Steven Gohmann
Heritage Environmental Services

Tom Simon
US Fish & Wildlife Services

John P. Maher
Delphi Automotive

Dr. Rae Schnapp
Hoosier Environmental Council

Paul A. Johnson
Indianapolis Water Company

Kerry Michael Manders
EQSC Member

Brian Daggy
Indiana Farm Bureau

Legislative Services Agency Staff

Bob Bond
Attorney for the Task Force

Water Data Task Force Meeting Summary

The Water Data Task Force met on November 16, 2000. Matt Rueff, Office of Water Management, IDEM, gave a presentation entitled "Indiana Department of Environmental Management Water Quality Data." The task force posed questions to Mr. Rueff, and discussed the program resource needs of IDEM to collect adequate physical, chemical, and biological data used by IDEM. The Task Force did not set a date for its next meeting.